

AMENDED IN ASSEMBLY AUGUST 11, 2008

AMENDED IN ASSEMBLY JULY 1, 2008

AMENDED IN ASSEMBLY JUNE 19, 2008

AMENDED IN SENATE MAY 27, 2008

AMENDED IN SENATE MAY 23, 2008

AMENDED IN SENATE APRIL 22, 2008

SENATE BILL

No. 1406

Introduced by Senators Correa and Aanestad

February 21, 2008

An act to amend Sections 3041 and 3152 of, *and to add and repeal Section 3041.10 of*, the Business and Professions Code, relating to optometry.

LEGISLATIVE COUNSEL'S DIGEST

SB 1406, as amended, Correa. Optometry.

Existing law, the Optometry Practice Act, creates the State Board of Optometry, which licenses optometrists and regulates their practice. The act defines the practice of optometry as including the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system. The act also prescribes certain eye or eye appendage conditions which an optometrist who is certified to use therapeutic pharmaceutical agents may diagnose and treat, as specified and subject to certain limitations, and requires additional certification for the performance of primary open-angle glaucoma and lacrimal irrigation and dilation procedures, respectively.

This bill would revise and recast those provisions to further allow an optometrist who is certified to use therapeutic pharmaceutical agents to, among others, treat glaucoma, as defined, under specified certification standards, order any test or procedure necessary for the diagnosis of conditions or diseases of the eye or adnexa, to perform punctal occlusion by cautery, to prescribe lenses or devices that incorporate a medication or therapy the optometrist is certified to prescribe or provide, to use sharp instruments within the central 3 millimeters of the cornea, and to perform nonintraorbital injections. The bill would further allow an optometrist who graduated from an accredited school of optometry on or after May 1, 2000, to perform lacrimal irrigation and dilation procedures without additional certification. The bill would also make other changes with regard to the circumstances under which an ophthalmologist or an appropriate physician and surgeon or other health care provider is required to be consulted with, or patients referred to, and to certain age requirements related to treatment or diagnosis, as specified. The bill would further make a conforming change to a related provision, and would make a statement of legislative intent, as specified.

Until January 1, 2010, this bill would also provide for a Glaucoma Diagnosis and Treatment Advisory Committee within the State Board of Optometry to consist of 6 members for purposes of assisting the board in establishing certain requirements for glaucoma certification. The bill would require the committee to submit its final recommendations to the Office of Examination Resources of the Department of Consumer Affairs by April 1, 2009, would require the office to present those recommendations and any modifications thereof to the board by July 1, 2009, and require the board to adopt the office's findings by January 1, 2010.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3041 of the Business and Professions
- 2 Code is amended to read:
- 3 3041. (a) The practice of optometry includes the prevention
- 4 and diagnosis of disorders and dysfunctions of the visual system,
- 5 and the treatment and management of certain disorders and
- 6 dysfunctions of the visual system, as well as the provision of

1 rehabilitative optometric services, and is the doing of any or all of
2 the following:

3 (1) The examination of the human eye or eyes, or its or their
4 appendages, and the analysis of the human vision system, either
5 subjectively or objectively.

6 (2) The determination of the powers or range of human vision
7 and the accommodative and refractive states of the human eye or
8 eyes, including the scope of its or their functions and general
9 condition.

10 (3) The prescribing or directing the use of, or using, any optical
11 device in connection with ocular exercises, visual training, vision
12 training, or orthoptics.

13 (4) The prescribing of contact and spectacle lenses for, or the
14 fitting or adaptation of contact and spectacle lenses to, the human
15 eye, including lenses that may be classified as drugs or devices by
16 any law of the United States or of this state.

17 (5) The use of topical pharmaceutical agents for the purpose of
18 the examination of the human eye or eyes for any disease or
19 pathological condition.

20 (b) (1) An optometrist who is certified to use therapeutic
21 pharmaceutical agents, pursuant to Section 3041.3, may also
22 diagnose and treat the human eye or eyes, or any of its appendages,
23 for all of the following conditions:

24 (A) Through medical treatment, infections of the anterior
25 segment and adnexa, excluding the lacrimal gland, the lacrimal
26 drainage system, and the sclera in patients under 12 years of age.

27 (B) Ocular allergies of the anterior segment and adnexa.

28 (C) Ocular inflammation, limited to inflammation resulting from
29 traumatic iritis, peripheral corneal inflammatory keratitis,
30 episcleritis, and unilateral nonrecurrent nongranulomatous
31 idiopathic iritis in patients over 12 years of age. Unilateral
32 nongranulomatous idiopathic iritis recurring within one year of
33 the initial occurrence shall be referred to an ophthalmologist. An
34 optometrist shall consult with an ophthalmologist or appropriate
35 physician and surgeon if a patient has a recurrent case of episcleritis
36 within one year of the initial occurrence. An optometrist shall
37 consult with an ophthalmologist or appropriate physician and
38 surgeon if a patient has a recurrent case of peripheral corneal
39 inflammatory keratitis within one year of the initial occurrence.

1 (D) Traumatic or recurrent conjunctival or corneal abrasions
2 and erosions.

3 (E) Corneal surface disease and dry eyes.

4 (F) Ocular pain associated with conditions optometrists are
5 authorized to treat.

6 (G) Pursuant to subdivision (f), glaucoma in patients over 18
7 years of age, as described in subdivision (j).

8 (2) For purposes of this section, “treat” means the use of
9 therapeutic pharmaceutical agents, as described in subdivision (c),
10 and the procedures described in subdivision (e).

11 (c) In diagnosing and treating the conditions listed in subdivision
12 (b), an optometrist certified to use therapeutic pharmaceutical
13 agents pursuant to Section 3041.3; may use all of the following
14 therapeutic pharmaceutical agents:

15 (1) Pharmaceutical agents as described in paragraph (5) of
16 subdivision (a), as well as topical miotics.

17 (2) Topical lubricants.

18 (3) Antiallergy agents.

19 (4) Topical and oral antiinflammatories. In using steroid
20 medication for:

21 (A) Unilateral nonrecurrent nongranulomatous idiopathic iritis
22 or episcleritis, an optometrist shall consult with an ophthalmologist
23 or other appropriate health care provider if the patient’s condition
24 worsens 72 hours after the diagnosis, or if the patient’s condition
25 has not resolved three weeks after diagnosis. If the patient is still
26 receiving medication for these conditions six weeks after diagnosis,
27 the optometrist shall refer the patient to an ophthalmologist or
28 other appropriate health care provider.

29 (B) Peripheral corneal inflammatory keratitis, excluding
30 Moorens and Terriens diseases, an optometrist shall consult with
31 an ophthalmologist or other appropriate health care provider if the
32 patient’s condition worsens 72 hours after diagnosis.

33 (C) Traumatic iritis, an optometrist shall consult with an
34 ophthalmologist or appropriate physician and surgeon if the
35 patient’s condition worsens 72 hours after diagnosis and shall refer
36 the patient to an ophthalmologist or appropriate physician and
37 surgeon if the patient’s condition has not resolved one week after
38 diagnosis.

39 (5) Topical antibiotic agents.

40 (6) Topical hyperosmotics.

1 (7) Topical and oral antiglaucoma agents pursuant to the
2 certification process defined in subdivision (f).

3 (A) The optometrist shall refer the patient to an ophthalmologist
4 if requested by the patient or if angle closure glaucoma develops.

5 (B) If the glaucoma patient also has diabetes, the optometrist
6 shall consult with the physician treating the patient's diabetes in
7 developing the glaucoma treatment plan and shall inform the
8 physician in writing of any changes in the patient's glaucoma
9 medication.

10 (8) Nonprescription medications used for the rational treatment
11 of an ocular disorder.

12 (9) Oral antihistamines.

13 (10) Prescription oral nonsteroidal antiinflammatory agents.

14 (11) Oral antibiotics for medical treatment of ocular disease.

15 (A) If the patient has been diagnosed with a central corneal ulcer
16 and the central corneal ulcer has not improved 72 hours after
17 diagnosis, the optometrist shall refer the patient to an
18 ophthalmologist.

19 (B) If the patient has been diagnosed with preseptal cellulitis
20 or dacryocystitis and the condition has not improved 72 hours after
21 diagnosis, the optometrist shall refer the patient to an
22 ophthalmologist.

23 (12) Topical and oral antiviral medication for the medical
24 treatment of the following: herpes simplex viral keratitis, herpes
25 simplex viral conjunctivitis, and periocular herpes simplex viral
26 dermatitis; and varicella zoster viral keratitis, varicella zoster viral
27 conjunctivitis, and periocular varicella zoster viral dermatitis.

28 (A) If the patient has been diagnosed with herpes simplex
29 keratitis or varicella zoster viral keratitis and the patient's condition
30 has not improved seven days after diagnosis, the optometrist shall
31 refer the patient to an ophthalmologist. If a patient's condition has
32 not resolved three weeks after diagnosis, the optometrist shall refer
33 the patient to an ophthalmologist.

34 (B) If the patient has been diagnosed with herpes simplex viral
35 conjunctivitis, herpes simplex viral dermatitis, varicella zoster
36 viral conjunctivitis, or varicella zoster viral dermatitis, and if the
37 patient's condition worsens seven days after diagnosis, the
38 optometrist shall consult with an ophthalmologist. If the patient's
39 condition has not resolved three weeks after diagnosis, the
40 optometrist shall refer the patient to an ophthalmologist.

1 (13) Oral analgesics that are not controlled substances.

2 (14) Codeine with compounds and hydrocodone with
3 compounds as listed in the California Uniform Controlled
4 Substances Act (Section 11000 of the Health and Safety Code et
5 seq.) and the United States Uniform Controlled Substances Act
6 (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be
7 limited to three days, with a referral to an ophthalmologist if the
8 pain persists.

9 (d) In any case where this chapter requires that an optometrist
10 consult with an ophthalmologist, the optometrist shall maintain a
11 written record in the patient's file of the information provided to
12 the ophthalmologist, the ophthalmologist's response and any other
13 relevant information. Upon the consulting ophthalmologist's
14 request and with the patient's consent, the optometrist shall furnish
15 a copy of the record to the ophthalmologist.

16 (e) An optometrist who is certified to use therapeutic
17 pharmaceutical agents pursuant to Section 3041.3 may also perform
18 all of the following:

19 (1) Procedures necessary for the diagnosis or treatment of a
20 condition of the eye or visual system, including, ~~but not limited~~
21 ~~to:~~

22 ~~(A) Biopsies not requiring sutures.~~

23 ~~(B)~~

24 (A) Corneal scraping with cultures.

25 ~~(C)~~

26 (B) Debridement.

27 ~~(D)~~

28 (C) Epilation, including with cryo or electro cautery.

29 ~~(E) Nonintraorbital~~

30 (D) *Nonintraorbital* injections.

31 ~~(F)~~

32 (E) Removal of skin tags.

33 ~~(G)~~

34 (F) Shaving of epidermal or dermal lesions.

35 ~~(H)~~

36 (G) Stromal micropuncture.

37 ~~(I)~~

38 (H) Suture removal, with prior consultation.

39 ~~(J)~~

40 (I) Treatment or removal of lymphatic or sebaceous cysts.

1 (2) Ordering of smears, cultures, sensitivities, complete blood
2 count, mycobacterial culture, acid fast stain, urinalysis, and other
3 tests or procedures necessary for the diagnosis of conditions or
4 diseases of the eye or adnexa.

5 (3) Punctal occlusion by plugs and cautery, excluding laser,
6 diathermy, cryotherapy, or other means constituting surgery as
7 defined in this chapter.

8 (4) The prescription of therapeutic contact lenses, including
9 lenses or devices that incorporate a medication or therapy the
10 optometrist is certified to prescribe or provide.

11 (5) Removal of foreign bodies from the cornea, eyelid, and
12 conjunctiva. Corneal foreign bodies shall be nonperforating, be
13 no deeper than the midstroma, and require no surgical repair upon
14 removal.

15 (6) For patients over 12 years of age, lacrimal irrigation and
16 dilation, excluding probing of the nasal lacrimal tract. The board
17 shall certify any optometrist who graduated from an accredited
18 school of optometry before May 1, 2000, to perform this procedure
19 after submitting proof of satisfactory completion of 10 procedures
20 under the supervision of an ophthalmologist as confirmed by the
21 ophthalmologist. Any optometrist who graduated from an
22 accredited school of optometry on or after May 1, 2000, shall be
23 exempt from the certification requirement contained in this
24 paragraph.

25 (f) The board shall grant a certificate to an optometrist certified
26 pursuant to Section 3041.3 for the treatment of glaucoma, as
27 described in subdivision (j), in patients over 18 years of age after
28 the optometrist meets the following applicable requirements:

29 (1) For licensees who graduated from an accredited school of
30 optometry on or after May 1, 2008, submission of proof of
31 graduation from that institution.

32 (2) For licensees who were certified to treat glaucoma under
33 this chapter prior to January 1, 2009, submission of proof of
34 completion of that certification program.

35 (3) For licensees who graduated from an accredited school of
36 optometry on or after May 1, 2000, submission of proof of
37 satisfactory completion of not less than 12 hours in case
38 management of patients diagnosed with glaucoma.

39 (4) For licensees who have completed a didactic course of not
40 less than 24 hours in the diagnosis, pharmacological, and other

1 treatment and management of glaucoma developed by an accredited
2 school of optometry, submission of proof of satisfactory completion
3 of not less than 12 hours in case management of patients diagnosed
4 with glaucoma.

5 (5) For licensees not described in the preceding paragraphs,
6 submission of proof of satisfactory completion of a didactic course
7 of not less than 24 hours in the diagnosis, pharmacological, and
8 other treatment and management of glaucoma developed by an
9 accredited school of optometry, and not less than 12 hours in case
10 management of patients diagnosed with glaucoma.

11 (g) ~~Any~~ *Other than for prescription ophthalmic devices*
12 *described in subdivision (b) of Section 2541, any* dispensing of a
13 therapeutic pharmaceutical agent by an optometrist shall be without
14 charge.

15 (h) The practice of optometry does not include performing
16 surgery. “Surgery” means any procedure in which human tissue
17 is cut, altered, or otherwise infiltrated by mechanical or laser means
18 in a manner not specifically authorized by this chapter. Nothing
19 in this section shall limit an optometrist’s authority to utilize
20 diagnostic laser and ultrasound technology within his or her scope
21 of practice.

22 (i) An optometrist licensed under this chapter is subject to the
23 provisions of Section 2290.5 for purposes of practicing
24 telemedicine.

25 (j) For purposes of this chapter, “glaucoma” means either of the
26 following:

27 (1) All primary open-angle glaucoma.

28 (2) All secondary open-angle glaucoma, excluding irido-corneal
29 endothelial syndrome and neovascular glaucoma.

30 (k) For purposes of reversal or stabilization, an optometrist shall
31 immediately refer any patient who has an acute attack of angle
32 closure to an ophthalmologist.

33 *SEC. 2. Section 3041.10 is added to the Business and*
34 *Professions Code, to read:*

35 *3041.10. (a) The Legislature hereby finds and declares that*
36 *it is necessary to ensure that the public is adequately protected*
37 *during the transition to full certification for all licensed*
38 *optometrists who desire to treat and manage glaucoma patients.*

39 *(b) The board shall appoint a Glaucoma Diagnosis and*
40 *Treatment Advisory Committee as soon as practicable after*

1 *January 1, 2009. The committee shall consist of six members*
2 *currently licensed and in active practice in their professions in*
3 *California, with the following qualifications:*

4 *(1) Two members shall be optometrists who were certified by*
5 *the board to treat glaucoma pursuant to the provisions of*
6 *subdivision (f) of Section 3041, as that provision read on January*
7 *1, 2001, and who are actively managing glaucoma patients in*
8 *full-time practice.*

9 *(2) One member shall be a glaucoma-certified optometrist*
10 *currently active in educating optometric students in glaucoma.*

11 *(3) One member shall be a physician and surgeon*
12 *board-certified in ophthalmology with a specialty or subspecialty*
13 *in glaucoma who is currently active in educating optometric*
14 *students in glaucoma.*

15 *(4) Two members shall be physicians and surgeons*
16 *board-certified in ophthalmology who treat glaucoma patients.*

17 *(c) The board shall solicit from the following organizations*
18 *their advice and recommendations before appointing members of*
19 *the committee:*

20 *(1) For the optometrists' appointments:*

21 *(A) The California Optometric Association.*

22 *(B) The Southern California College of Optometry.*

23 *(C) The University of California at Berkeley School of*
24 *Optometry.*

25 *(2) For the physician and surgeons' appointments:*

26 *(A) The California Medical Association.*

27 *(B) The California Academy of Eye Physicians and Surgeons.*

28 *(C) Ophthalmology residency programs and treatment centers*
29 *located at a California school or schools of medicine.*

30 *(d) The committee shall assist the board in establishing*
31 *requirements for glaucoma certification, as authorized by Section*
32 *3041, by recommending the following:*

33 *(1) An appropriate 12-hour case management curriculum for*
34 *applicants for certification described in paragraphs (3) and (4)*
35 *of subdivision (f) of Section 3041.*

36 *(2) An appropriate 36-hour didactic and case management*
37 *curriculum for applicants for certification described in paragraph*
38 *(5) of subdivision (f) of Section 3041.*

39 *(e) The committee shall meet at such times and places as*
40 *determined by the board and shall not meet initially until all six*

1 *members are appointed. Committee meetings shall be public and*
2 *a quorum shall consist of four members in attendance at any*
3 *properly noticed meeting.*

4 *(f) (1) The committee shall submit its final recommendations*
5 *to the Office of Examination Resources of the department on or*
6 *before April 1, 2009. The office shall examine the committee's*
7 *recommended curriculum requirements to determine whether they*
8 *will do the following:*

9 *(A) Adequately protect glaucoma patients.*

10 *(B) Ensure that defined applicant optometrists will be certified*
11 *to treat glaucoma on an appropriate and timely basis.*

12 *(C) Be consistent with the department's and board's examination*
13 *validation for licensure and occupational analyses policies adopted*
14 *pursuant to subdivision (b) of Section 139.*

15 *(2) The office shall present the recommendations and any*
16 *modifications necessary to meet the requirements of paragraph*
17 *(1) to the board on or before July 1, 2009. The board shall adopt*
18 *the findings of the office and shall implement certification*
19 *requirements pursuant to this section on or before January 1, 2010.*

20 *(g) This section shall remain in effect only until January 1, 2010,*
21 *and as of that date is repealed, unless a later enacted statute, that*
22 *is enacted before January 1, 2010, deletes or extends that date.*

23 ~~SEC. 2.~~

24 ~~SEC. 3.~~ Section 3152 of the Business and Professions Code is
25 amended to read:

26 3152. The amount of fees and penalties prescribed by this
27 chapter shall be established by the board in amounts not greater
28 than those specified in the following schedule:

29 (a) The fee for applicants applying for a license shall not exceed
30 two hundred seventy-five dollars (\$275).

31 (b) The fee for renewal of an optometric license shall not exceed
32 five hundred dollars (\$500).

33 (c) The annual fee for the renewal of a branch office license
34 shall not exceed seventy-five dollars (\$75).

35 (d) The fee for a branch office license shall not exceed
36 seventy-five dollars (\$75).

37 (e) The penalty for failure to pay the annual fee for renewal of
38 a branch office license shall not exceed twenty-five dollars (\$25).

1 (f) The fee for issuance of a license or upon change of name
2 authorized by law of a person holding a license under this chapter
3 shall not exceed twenty-five dollars (\$25).

4 (g) The delinquency fee for renewal of an optometric license
5 shall not exceed fifty dollars (\$50).

6 (h) The application fee for a certificate to treat lacrimal irrigation
7 and dilation shall not exceed fifty dollars (\$50).

8 (i) The application fee for a certificate to treat glaucoma shall
9 not exceed fifty dollars (\$50).

10 (j) The fee for approval of a continuing education course shall
11 not exceed one hundred dollars (\$100).

12 (k) The fee for issuance of a statement of licensure shall not
13 exceed forty dollars (\$40).

14 (l) The fee for biennial renewal of a statement of licensure shall
15 not exceed forty dollars (\$40).

16 (m) The delinquency fee for renewal of a statement of licensure
17 shall not exceed twenty dollars (\$20).

18 (n) The application fee for a fictitious name permit shall not
19 exceed fifty dollars (\$50).

20 (o) The renewal fee for a fictitious name permit shall not exceed
21 fifty dollars (\$50).

22 (p) The delinquency fee for renewal of a fictitious name permit
23 shall not exceed twenty-five dollars (\$25).

24 ~~SEC. 3. (a)~~

25 *SEC. 4.* It is the intent of the Legislature that interested parties
26 come to resolution on the following questions related to proposed
27 amendments to existing law made by this act:

28 ~~(1)~~

29 (a) In paragraph (5) of subdivision (a) of Section 3041 of the
30 Business and Professions Code, whether it needs to be made clear
31 that optometrists certified to use only diagnostic pharmaceutical
32 agents may use only topical pharmaceutical agents for diagnostic
33 purposes.

34 ~~(2)~~

35 (b) In subparagraph (C) of paragraph (1) of subdivision (b) of
36 Section 3041 of the Business and Professions Code, whether it
37 needs to be made clear that treatment of postsurgical ocular
38 inflammation in cases comanaged by the operating ophthalmologist
39 and optometrist is permitted.

40 ~~(3)~~

1 (c) In paragraph (7) of subdivision (c) of Section 3041 of the
2 Business and Professions Code, whether it needs to be made clear
3 that glaucoma-certified optometrists may use oral glaucoma
4 therapeutic pharmaceutical agents only for the purpose of reversing
5 or stabilizing angle closure glaucoma prior to immediate referral,
6 as specified in subdivision (k) of Section 3041 of the Business and
7 Professions Code.

8 (4)

9 (d) In subparagraph (A) of paragraph (1) of subdivision (e) of
10 Section 3041 of the Business and Professions Code, whether it
11 needs to be made clear that optometrists are authorized to perform
12 biopsies not requiring sutures for testing purposes to confirm
13 diagnoses.

14 (5)

15 (e) As provided in subparagraph (J) of paragraph (1) of
16 subdivision (e) of Section 3041 of the Business and Professions
17 Code, whether optometrists should be authorized to treat or remove
18 lymphatic or sebaceous cysts.

19 ~~(b) It is the intent of the Legislature that interested parties come~~
20 ~~to resolution on a collaborative process for certification of~~
21 ~~optometrists by the State Board of Optometry described in~~
22 ~~paragraphs (3), (4), and (5) as added to subdivision (f) of Section~~
23 ~~3041 of the Business and Professions Code by this act, that both~~
24 ~~ensures that the public will be protected and that qualified~~
25 ~~applicants will be certified on an appropriate and timely basis.~~